

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re WELLS FARGO RESIDENTIAL
MORTGAGE LENDING DISCRIMINATION
LITIGATION

M: 08-md-01930 MMC

**ORDER AFFORDING DEFENDANT
LEAVE TO SUPPLEMENT
DECLARATION IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTIONS FOR SEALING ORDERS**

This Document Relates To:
ALL ACTIONS.

Before the Court are the following motions: (1) plaintiffs' "Administrative Motion Re: Sealing Order," filed October 12, 2010, which motion pertains to the propriety of the filing under seal of plaintiffs' motion for class certification, the declaration offered in support thereof, and the entirety of eighteen exhibits attached to the declaration; and (2) plaintiffs' "Administrative Motion Re: Sealing Order," filed October 29, 2010, which motion pertains to the propriety of the filing under seal of plaintiffs' joint opposition to defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") motion for summary judgment, the declaration offered in support of the joint opposition, and the entirety of the eight exhibits attached thereto. On October 18, 2010, Wells Fargo filed a declaration supporting, in part, the first of the two above-referenced administrative motions, and plaintiffs filed a response thereto. Having

1 read and considered the parties' respective filings,¹ the Court rules as follows.

2 To the extent Wells Fargo seeks an order sealing the entirety of nine deposition
3 transcripts, Wells Fargo has failed to show it is entitled to such relief. The Court has
4 previously denied Wells Fargo's request to file under seal an entire document where Wells
5 Fargo contended that only a portion of the document consisted of sealable matter. (See
6 Order, filed September 30, 2010, 5:5-15.) Such order appears to have had no effect on
7 Wells Fargo, because Wells Fargo, once again, seeks such relief. In this instance, Wells
8 Fargo asserts that over two thousand pages of deposition testimony should be kept from
9 the public for the reason that some portions of those transcripts are properly filed under
10 seal. Wells Fargo has failed to identify any specific page on which such testimony was
11 given, and the Court declines to conduct a review of over two thousand pages to attempt to
12 locate the testimony to which Wells Fargo may be referring. Rather than deny the request,
13 however, the Court will exercise its discretion to afford Wells Fargo leave to supplement its
14 showing to identify the specific pages and line numbers in the transcripts in which the
15 deponent gave testimony that, in Wells Fargo's view, discloses material "privileged or
16 protectable as a trade secret or otherwise entitled to protection under the law." See Civil
17 L.R. 79-5(a).

18 To the extent Wells Fargo seeks an order sealing the entirety of an exhibit it has
19 identified as "Wells Fargo Fair and Responsible Lending Compliance Sub-Program" (see
20 Thomas Decl., filed October 18, 2010, 5:1-2), Wells Fargo has failed to show it is entitled to
21 such relief. Although Wells Fargo asserts, without explanation, that said document
22 "contains privileged information" (see id. 5:3-4), Wells Fargo has not identified the specific
23 privilege on which it relies and, more importantly, has not identified the portion of said
24 document that contains, in Wells Fargo's view, privileged matter. The Court declines to
25 review the entirety of the document to determine whether some portion may be privileged,

26
27 ¹Although Wells Fargo did not file a response to the second of the two above-
28 referenced administrative motions, the Court considers Well Fargo's response to the first
motion to be its response to the second motion, in that Wells Fargo's response to the first
motion addresses each exhibit that is the subject of the second motion.

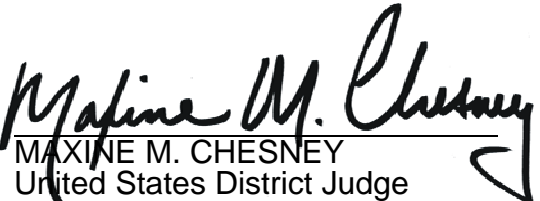
1 particularly where the nature of the privilege is not identified. Again, however, the Court will
 2 exercise its discretion to afford Wells Fargo leave to supplement its showing, in this
 3 instance, to identify the nature of the privilege(s) and to identify the particular portion(s) of
 4 the document that it believes are privileged.

5 To the extent Wells Fargo seeks an order sealing the entirety of documents it has
 6 identified as "Wells Fargo Broker Origination Agreement" and "Wells Fargo Law
 7 Department – Overview of Fair Lending Broker Price Monitoring for WFHM" (see id. 3:23,
 8 4:24-25), Wells Fargo has failed to show it is entitled to such relief. Wells Fargo's
 9 conclusory references to the first of those documents as being "unique to Wells Fargo" and
 10 the second as a document "contain[ing] information that is not public knowledge" are
 11 insufficient to warrant sealing of the entirety of the document or any portion thereof. (See
 12 id. 3:25-26, 4: 27-28.) Again, the Court will exercise its discretion to afford Wells Fargo
 13 leave to supplement its showing, in this instance, to set forth why the document is or
 14 contains material that is "privileged or protectable as a trade secret or otherwise entitled to
 15 protection under the law," see Civil L.R. 79-5(a), and to indicate the portion(s) of said
 16 documents that are sealable.

17 Accordingly, the ruling on plaintiffs' administrative motion is hereby DEFERRED, and
 18 Wells Fargo is afforded leave to file, no later than November 29, 2010, a supplement to its
 19 declaration to address the matters set forth above.²

20 **IT IS SO ORDERED.**

21
 22 Dated: November 19, 2010


 MAXINE M. CHESNEY
 United States District Judge

23
 24
 25
 26
 27 ²To the extent Wells Fargo seeks an order sealing a document it has identified as
 28 "Wells Fargo Retail Pricing Policy" (see id. 3:27), the Court finds it has sufficient information
 to make a determination, and, accordingly, Wells Fargo need not supplement its showing
 as to said document.